

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT**

PLACEWARE, INC.

This **VOLUME PRICING CONTRACT** for the acquisition of Placeware Microsoft Live Office Meeting services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Placeware, Inc. ("Vendor") (a wholly owned subsidiary of Microsoft Corporation ("Microsoft")) with its principal business offices located at One Microsoft Way, Redmond, WA 98052.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of Placeware Microsoft Live Office Meeting services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on the date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Definitions

Terms used in this Contract shall have the following meanings:

- A. DIR** - the Department of Information Resources
- B. Customer** - any Texas State Agency and unit of local government as defined in §2054.003, Texas Government Code, including any state agency which may be eligible to use this Contract under an Interagency contract as authorized by Chapter 771, Texas Government Code.
- C. Vendor** - Placeware, Inc.
- D. Services** - value-added services that the Vendor may perform as related to products available under this Contract.
- E. State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
- F. Vendor Contract Administrator** - the individual as appointed by the Vendor to administer this Contract on behalf of the Vendor.
- G. Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
- H. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- I. Information Resources Technology (Technologies)** - as defined in Texas Government Code §2054.003.
- J. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

K. State – refers to the State of Texas.

L. Software – actual copy of, or any portion of, Vendor's computer programs delivered on media including, but not limited to, beta, prerelease or restricted versions, or final release, inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied by Vendor.

3. Entire Agreement and Order of Precedence

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Appendix B, Customer Service Agreement; Appendix C, Discount Index; and Appendix D, Texas Marketplace, Electronic State Business Daily Posting Document constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, and finally Appendix D. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract, and Customers transacting business with Vendor are likewise bound by the terms of this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Vendor shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

4. Service Offerings

Services available under this Contract are limited to those awarded to Vendor based on Texas Marketplace, Electronic State Business Daily posting number DIR-TMP-011, a copy of which is attached hereto as Appendix D.

Services available under this Contract are limited to Placeware Microsoft Live Office Meeting Services. Vendor will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering. Customers are required to execute a Customer Service Agreement with Vendor, as set forth in Appendix B, in order to receive the services.

5. Use of Resellers

DIR agrees to permit Vendor to utilize Reseller as designated by Vendor, Software House International – Government Solutions (SHI-GS). Such participation is subject to the following conditions:

A. Designation of Reseller

Vendor shall designate Reseller to participate under this Contract to act as the product/order distributors. DIR reserves the right to rescind any such Reseller participation or request that Vendor name additional Resellers should DIR determine it is in the best interest of the State.

All Resellers who have been approved by the Vendor shall be eligible to quote Contract pricing for procurements under this Contract. Vendor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means restrict any

Reseller's participation or ability to quote a particular order; or prohibit Reseller from participating in other procurement opportunities offered through DIR.

B. Changes in Reseller List

Vendor may add and/or delete Resellers throughout the term of the contract provided the total number of Resellers shall be no less than one (1).

C. Conditions of Reseller Participation

All participating Resellers must be approved Catalog Information Systems Vendors with the State of Texas.

D. Responsibility for Reseller Performance and Reporting

Vendor shall be fully liable for Resellers performance and compliance with all Contract terms and conditions of Appendix C herein. Reseller shall be responsible for reporting all products and services purchased through Reseller under the terms of the Reseller's Contract with DIR.

E. Available Services

Services ordered directly through Reseller shall be limited to services previously approved for inclusion under this Contract in Section 4, Service Offerings, and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

F. Vendor Pricing to Reseller

Vendor is required to offer the same pricing to all participating Resellers for all services offered under this Contract.

G. Reseller Pricing to Customer

Pricing discount to the Customer shall not be less than what is specified in Section 6 below.

6. Pricing

The price to the Customer for services is based on Vendor's Suggested Retail Price, the Customer discount specified in Appendix C, and the DIR administrative fee as specified in Section 10. The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = (\text{Vendor's Suggested Retail Price} - \text{Customer Discount}) + \text{DIR administrative fee.}$$

A. Customer Discount

Based on a quantity of one (1), the Customer discount from the Vendor for all products and services, excluding the annual software maintenance and support plans, will be the percentage off Vendors Suggested Retail Price as specified in Appendix C, Pricing Index. Customer may negotiate more advantageous pricing for large volume purchases.

Vendor is required to offer the same Customer Discount to all participating Customers. If Vendor offers and makes sales of its products and services at a higher rate of discount, based on a quantity of one, from that specified in this Contract, to an eligible DIR Customer, other entity or consortia authorized by Texas law to sell Vendor's products and services to eligible DIR Customers, then the available discount levels in this Contract shall automatically be adjusted to that higher discount rate.

B. DIR Administrative fee

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The DIR administrative fee specified in Section 10, Reporting and Administrative Fees, shall be included in the Customer price for all products and services. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the Vendor's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified in Paragraph A, Customer Discount, of this Section. Price decreases shall take effect automatically during this Contract term and Vendor shall pass all price decreases on to the Customer.

Vendor may make product changes or upgrades, add new modules at any time, or change the service offering; however, the pricing for the same shall incorporate comparable price discount levels as specified in Paragraph A, Customer Discount, of this Section.

F. Travel

Pricing for services set forth herein is exclusive of any travel expenses that may be incurred by Vendor in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by state agency Customers shall not exceed the amounts authorized by the current State Travel Regulations. The DIR administrative fee specified in Section 10, Reporting and Administrative Fees, is not applicable to travel expense reimbursement. Anticipated travel expenses must be approved in advance in writing by Customer.

7. Order Processing and Payments

A. Order Processing

All Customer Purchase Orders will be placed directly with the Reseller pursuant to the terms of the Reseller's Contract with DIR. Customers will be required to execute a Customer Service Agreement with Vendor in order to receive the services.

B. Payments

Invoices shall be submitted by the Reseller directly to the Customer and payments will be made to the Reseller pursuant to the terms of the Reseller's Contract with DIR.

8. Customer Service Agreements

Vendor shall provide the services as specified in the Customer Service Agreement as set forth in Appendix B hereto. Customers acquiring services under this Contract are subject to compliance with the terms and conditions of Appendix B. No changes to the Customer

Service Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix B.

9. Contract Administration

DIR and the Vendor will each provide a Contract Administrator to support this Contract. Information regarding the Contract Administrators will be posted on the Internet web site designated for this Contract.

A. DIR Contract Administrator

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Vendor's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

B. Vendor Contract Administrator

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between Vendor and a Customer, and iii) advising DIR of its performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

10. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet by the Reseller pursuant to the terms of the Reseller's Contract with DIR.

11. Reporting and Administrative Fees

Pursuant to the terms of the Reseller's Contract with DIR, Reseller shall be responsible for reporting all products and services purchased under this Contract.

12. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Vendor:

General Manager, Sales
Copy to Law & Corporate Affairs
Placeware, Inc.
One Microsoft Way
Redmond, Washington 98052-6399
Fax: (425) 706-7329

13. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

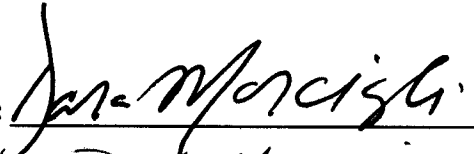
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14. Choice of Law

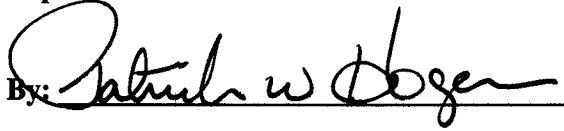
The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

Placeware, Inc.

By: 
 Name: DANA MANCIGLI
 Title: GENERAL MANAGER
 Date: 1/28/04

**The State of Texas, acting by and through the
 Department Of Information Resources**

By: 
 Name: Patrick W. Hogan
 Title: Director of Business Operations
 Date: 1/23/04

Legal 
1/23/04

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STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

1. INDEMNIFICATION CLAUSE.

VENDOR will defend DIR and Customers against any of the following claims made by an unaffiliated third party, and will pay the amount of any resulting adverse final judgment (or settlement to which VENDOR consents):

claims that any Services infringe its patent, copyright or trademark or misappropriate its trade secret.

DIR and/or Customer must notify VENDOR promptly in writing of the claim and give VENDOR sole control over its defense or settlement, subject to coordination with the Texas Office of the Attorney General. DIR and Customers agree to provide VENDOR with reasonable assistance in defending the claim, and VENDOR will reimburse DIR and/or Customer for reasonable out of pocket expenses that DIR and/or Customer incurs in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act, except in the case of claims arising under any license or service agreement governed by the laws of any jurisdiction outside the United States, in which "misappropriation" will mean intentionally unlawful use and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPs agreement.

VENDOR's obligations will not apply to the extent that the claim or adverse final judgment is based on (i) specifications DIR or Customer provides to VENDOR for the Services; (ii) code or materials provided by DIR and/or Customer as part of Services; (iii) DIR's and/or Customer's running of the Services after VENDOR notifies DIR and/or Customer to discontinue running due to such a claim; (iv) DIR's and/or Customer's combining the Services with a non-VENDOR product, data or business process; (v) damages attributable to the value of the use of a non-VENDOR product, data or business process; (vi) DIR's and/or Customer's altering the Services; (vii) DIR's and/or Customer's distribution of the Services to, or its use for the benefit of, any third party; (viii) DIR's and/or Customer's use of VENDOR's trademark(s) without express written consent to do so; or (ix) for any trade secret claim, DIR's and/or Customer's acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than VENDOR or VENDOR's affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. DIR and/or Customer will reimburse VENDOR for any costs or damages that result from these actions.

If VENDOR receives information concerning an infringement claim related to the Services, VENDOR may, at VENDOR's expense and without obligation to do so, either (i) procure for DIR and/or Customer the right to continue to run the allegedly infringing Services, or (ii) modify the Services or replace it with a functional equivalent, to make it non-infringing, in which case DIR and/or Customer will stop running the allegedly infringing Services immediately. If, as a result of an infringement claim, DIR's and/or Customer's use of Services is enjoined by a court of competent jurisdiction, VENDOR will, at VENDOR's option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for and, as applicable to certain Services, DIR's and/or Customer's ownership rights in, the infringing Services.

If any other type of third party claim is brought against DIR and/or Customer regarding VENDOR's intellectual property, DIR and/or Customer must notify VENDOR promptly in writing. VENDOR may, at VENDOR's option, choose to treat these claims as being covered by this section. This section provides

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DIR's and/or Customer's exclusive remedy for third party infringement and trade secret misappropriation claims.

2. **NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.

3. **NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Vendor. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. **CONFIDENTIALITY CLAUSE.** Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release to any party in any manner, customer information.

In the event that any access request, audit or investigation is sought under this agreement: (1) the access, audit or investigation will be limited to relevant information concerning funds received by Vendor under this agreement between DIR and Vendor, and (2) Vendor shall not be required to disclose confidential information pertaining to any other customers of Vendor.

5. **VENDOR CERTIFICATIONS.** Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under this Contract.

6. **EQUAL OPPORTUNITY COMPLIANCE.** Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from

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employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this Contract. If Vendor is found to be not in compliance with these requirements during the term of this Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only) Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

You[DIR] agree to provide us [Vendor] with written notice of any claim of non-compliance of one or more Services with respect to this Section, and shall allow us a reasonable period of time in which to cure such non-compliance. Provided we are unable to cure such non-compliance within a reasonable period of time, you and your affiliates' and Customers' sole remedy for our breach of this Section shall be to receive from us a pro-rata refund of any advance purchases of the Services.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Vendor shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Vendor represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

9. RECORDS. The Vendor shall maintain adequate records to establish compliance with this Contract for a period not to exceed four (4) years in paper form, after which time digital records will be maintained until the later of a period of four years after termination of this contract or until full, final and unappealable resolution of reasonable Compliance Check or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, name of participating Vendor for the procurement, unit price, extended price, participating Vendor invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

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Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, including compliance checks of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Vendor without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of Compliance Check.

Vendor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS. The Vendor is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Vendor is a "Catalog Information Systems Vendor" approved by the Texas Building and Procurement Commission. All computer products and services offered to Customers under this Contract are listed in Vendor's catalogue on file with the Texas Building and Procurement Commission.

11. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

12. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Vendor and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

13. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

14. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. Customers procuring under this Contract are bound by the terms and conditions of this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Vendor. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order or Statement of Work and given effect.

15. DIR LOGO. Vendor may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo; (iii) the DIR logo is only used to

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communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

16. TRADE SHOW PARTICIPATION. Vendor understands and agrees that it must participate by providing a manned booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Vendor's expense. Vendor must display the DIR logo at all trade shows. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Vendor's booth.

Vendor's requirement for trade show participation shall be deemed satisfied by DIR with the purchase by Microsoft Corporation of two (2) manned booth displays or similar presence per trade show or similar function sponsored by DIR Business Operations, one for Government and one for Education. The two booths shall cover the trade show requirement for all contracts executed between Microsoft and DIR.

17. FORCE MAJEURE. DIR, Customer, or Vendor may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take reasonable steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties promptly. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order or Statement of Work if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

18. TERMINATION FOR NON-APPROPRIATION. Customer may terminate Purchase Orders or Statements of Work and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor will be provided ten (10) days written notice of intent to terminate.

19. TERMINATION FOR CONVENIENCE. DIR or the Vendor may terminate this Contract, in whole or in part, by giving the other party sixty (60) days written notice. A Customer may terminate a Purchase Order or Statement of Work if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer. The Vendor will be given thirty (30) days from the date of receipt of such notification to affect corrective measures to the satisfaction of the Customer.

20. TERMINATION FOR CAUSE. Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order or Statement of Work arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order or Statement of Work.

21. CUSTOMER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order or Statement of Work with respect to all products or services ordered and accepted prior to the effective termination date.

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22. VENDOR RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, Vendor's contractual relationship with any Customer whose Purchase Order or Statement of Work provides for a term that survives such termination shall continue following such termination of this Contract, for the term specified and according to the terms and conditions stated in such Purchase Order or Statement of Work and as applicable, in this Contract. Such Customers shall be obligated to pay Vendor all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and to make any and all payments called for by the applicable Purchase Order or Statement of Work.

23. SURVIVAL. All warranty and/or service agreements that were entered into between Vendor and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract, to the extent and for the term specified in the agreement between Vendor and such Customer.

24. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, TX 78701.

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APPENDIX B

MICROSOFT OFFICE LIVE MEETING
CUSTOMER SERVICE AGREEMENT

This Microsoft Office Live Meeting Master Services Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 200__ (the "Effective Date") by and between _____, ("CUSTOMER"), its principal business offices located at _____, and **PLACEWARE, INC.** ("PLACEWARE") (a wholly owned subsidiary of **MICROSOFT CORPORATION** ("MICROSOFT")) with its principal business offices located at One Microsoft Way, Redmond, WA 98052.

The parties agree as follows:

(1) **Definitions.** All capitalized terms not defined in this Section 1 are as defined elsewhere in this Agreement.

"*Affiliated Entities*" means PLACEWARE and its licensors and suppliers and any other individual or entity who provides any part of the Services; PLACEWARE's parent Microsoft and all of Microsoft's affiliates; and all officers, employees, consultants and agents of any of the foregoing.

"*CUSTOMER Content*" means all data, text, images, sounds, computer programs and any other information, including without limitation everything that is uploaded by or for CUSTOMER or any User, including without limitation photographs, caricatures, illustrations, designs, icons, articles, audio clips, trademarks, logos and video clips.

"*Deployment Date*" means the date PLACEWARE first makes the Services (defined below) available to Customer (other than as part of a test or pre-release deployment), by means such as PLACEWARE providing a Production Site ID, an encryption key and/or other credentials from PLACEWARE for the Services.

"*Services*" means the services that CUSTOMER acquires from PLACEWARE from time to time, as further set forth from time to time in one (1) or more schedules, which shall be incorporated by this reference and which may be attached hereto ("Schedules").

"*Site*" means, collectively, PLACEWARE's Web site (www.placeware.com) and any successor or parallel Web site.

"*User(s)*" means any person or persons that participate in, access, or otherwise utilize the Services.

"*User Information*" means the information provided by each User of the Services as part of the registration or use of the Services, as generated, updated and amended from time to time by the User.

(2) **Services.** CUSTOMER and PLACEWARE acknowledge and agree that Software House International ("SHI") is an authorized reseller of PLACEWARE services. CUSTOMER will order its requirements of the Services from SHI. Pricing and payment terms for the Services shall be set forth in a separate agreement between SHI and CUSTOMER. All other terms and conditions under which the Services will be supplied by PLACEWARE to CUSTOMER will be as set forth in this Agreement. CUSTOMER agrees that all use of passwords and access keys will be attributed to CUSTOMER. PLACEWARE agrees to support the Services in accordance with the service level commitments described in the attached Service Level Exhibit.

(3) **Notice Regarding Software for Accessing and Using the Services.** Any software that is made available for download for access to Services ("Software") is the copyrighted work of PLACEWARE and/or Affiliated Entities. Use of the Software in connection with the Services may be governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("License Agreement") and CUSTOMER agrees to cause all Users of the Software to comply with the License Agreement. No User will be able to install any Software that is accompanied by or includes a License Agreement, unless he or she first agrees to the terms of the License Agreement. Accordingly, if a potential user does not agree, the Services will be unavailable to that user and CUSTOMER will need to designate another User.

(4) **Updates; Applicable Terms and Authorization for Auto Updates.** PLACEWARE may, in its sole discretion, provide, and this Agreement applies to, all updates, supplements, add-on components, features, or other functionality, including without limitation increases, decreases, and alterations of functionality, features, storage, security, availability, content, and other information relating to the Software or Services (collectively, "**Updates**") that PLACEWARE may provide or make available generally to its customers after the date that Services commence,

subject to any additional terms and conditions provided by PLACEWARE applicable to such Updates. CUSTOMER hereby authorizes PLACEWARE to, and agrees that PLACEWARE may, automatically and in good faith transmit, access, install, and otherwise provide Updates to the computers or other devices that utilizes the Software or accesses the Services (each, a "Device") without further notice or need for consent. CUSTOMER also agrees that PLACEWARE may obtain information from each Device reasonably necessary to provide the Services. PLACEWARE has no obligation to, and nothing in this Agreement may be construed to require PLACEWARE to, create, provide, or install Updates.

(5) **Access to Site; Restrictions, Suspension and Termination.** Subject to the terms and conditions hereunder, PLACEWARE grants CUSTOMER and CUSTOMER's Users a non-exclusive, revocable right to access and use the Services during the term of the Agreement. PLACEWARE reserves the right to suspend or discontinue without notice all or a part of the Services at any time if PLACEWARE believes a User or CUSTOMER is in breach of this Agreement or may harm PLACEWARE or anyone else. Upon any cancellation or expiration of this Agreement, CUSTOMER's and all Users' access to the Services will cease. CUSTOMER is prohibited from reselling or acting as a service bureau for the Services.

(6) **Ownership of Services.** PLACEWARE and its Affiliated Entities retain all right, title and interest in and to the Services, including without limitation all technology, software and copies relating to the Services. All graphics, logos, service marks, and trade names, including third-party names, product names, and brand names (collectively, the "Marks") relating to the Services are the trademarks of PLACEWARE or the applicable third parties. CUSTOMER is prohibited from using any Marks without the prior written permission of PLACEWARE or the applicable third party. PLACEWARE reserves all rights not expressly granted to CUSTOMER and CUSTOMER's Users in this Agreement.

(7) **CUSTOMER Retains Ownership of CUSTOMER Content.** PLACEWARE does not claim ownership of any CUSTOMER Content. CUSTOMER hereby grants to PLACEWARE a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to host, cache, record and display CUSTOMER Content solely for the purpose of providing the Services. Except as licensed in this Agreement, CUSTOMER and its licensors retain all right, title and interest in and to the CUSTOMER Content.

(8) **Privacy and Security** The PLACEWARE Privacy Policy may be accessed at the Site ("Privacy Policy") and CUSTOMER hereby acknowledges that it has read the Privacy Policy, that it is a part of this Agreement, and that it is incorporated herein by this reference. The Privacy Policy explains how certain information about CUSTOMER and Users may be processed and used, among many other details. CUSTOMER agrees to the terms and conditions of the Privacy Policy as if the "you" referenced therein is a reference to CUSTOMER. Under the Privacy Policy, "you" also refers to Users, and CUSTOMER further agrees to make all necessary disclosures to and to obtain all necessary consents from all Users.

(a) Privacy Policy. From the Deployment Date, each party shall have a privacy policy in place governing its use of Users' personal information that meets or exceeds all applicable laws, rules or regulations governing the use of such information.

(b) Security. Each party shall take commercially reasonable security and other measures to protect User Information from unauthorized access, use, disclosure, alteration and destruction. In addition each party shall implement security measures in connection with its use of the Services that meet or exceed the following standards:

- i. Access to servers used by each party in connection with its deployment of the Services shall be protected via commercially reasonable access control mechanisms and shall be limited to a designated set of the party's employees or contractors owing confidentiality obligations to the party; and
- ii. Each party shall use commercially reasonable efforts to remain current with and install all vendor service-related updates, including without limitation security patches, protocol updates, and hot fixes for use in connection with the Services.

(9) **Administrator.** CUSTOMER will appoint one or more administrators for the Services who will receive various communications and such administrator(s) shall comply on behalf of CUSTOMER with the instructions and requirements communicated by PLACEWARE from time to time, including without limitation those regarding registration, implementing processes to notify Users of the recording functions provided with the Services and distributing in an appropriate manner any access codes or keys provided by PLACEWARE in connection with the Services. Notwithstanding anything to the contrary herein, PLACEWARE and its Affiliated Entities are expressly permitted to make such communications to the administrators.

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(10) **Use Restrictions.** CUSTOMER also agrees that it will not, and will cause all Users who utilize the Services not to:

(a) use the Services in connection with chain letters, junk mail, surveys, contests, pyramid schemes, spamming or any duplicative or unsolicited messages, or any use of distribution lists to any person who has not given specific permission to be included in such a process (commercial or otherwise);

(b) harvest or otherwise collect information about others, including e-mail addresses, without their express consent;

(c) use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users or other user or usage information or any portion thereof other than in the context of CUSTOMER's use of the Services as permitted under the Agreement;

(d) interfere with any other party's use and enjoyment of the Services or otherwise use the Services in any manner that could damage, disable, overburden, impair, or otherwise interfere or disrupt the Site or Services or any networks connected to the Services;

(e) attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means;

(f) rent, lease, grant a security interest in, or otherwise transfer any rights CUSTOMER has in the use of the Services;

(g) reverse-engineer, modify, decompile, disassemble, translate or otherwise attempt to derive or view source code from any part of the Services or Site;

(h) defraud, defame, abuse, harass, stalk, threaten or otherwise violate the legal rights, including without limitation rights of privacy and publicity of others;

(i) upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, or infringe any third party's intellectual property rights, including without limitation, copyright, patent, moral rights or trademark laws (or by rights of privacy or publicity) unless CUSTOMER owns or controls the rights thereto or has received all necessary consent to do the same;

(j) upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar information that may damage the operation of another's computer or property or information; or

(k) falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.

(11) **Notice Regarding Recording and Privacy Features.** THE SERVICES ALLOW CUSTOMER TO RECORD MEETINGS AND TO COLLECT AND UTILIZE IDENTIFYING INFORMATION ABOUT SERVICE PARTICIPANTS, such as a name that is displayed, transmitted, processed or stored as part of a meeting or meeting record. THE LAWS OF SOME STATES OR COUNTRIES REQUIRE THE CONSENT OF INDIVIDUALS PRIOR TO RECORDING THEIR COMMUNICATIONS AND/OR RESTRICT COLLECTION, STORAGE AND USE OF PERSONALLY IDENTIFYING INFORMATION. CUSTOMER agrees to comply with all applicable laws and to obtain all necessary consents and make all disclosures before using the Services or features such as the recording feature.

(12) **Indemnity.**

(a) **Defense of Claims by CUSTOMER.** To the extent allowed by Texas law, CUSTOMER will defend, indemnify, and hold harmless PLACEWARE and its Affiliated Entities, and their respective directors, officers, employees and agents against any and all actions, demands, damages, losses, liabilities, authorized settlements, costs or expenses (including attorneys' fees), lawsuit or other judicial action brought by an unaffiliated third party for any of the following claims:

i. claims that any act or omission by CUSTOMER or its Users in connection with performance under this Agreement violates the terms of the Agreement, the rights of the third party, or any applicable law, rule, ordinance or regulation; or

ii. claims that CUSTOMER has misused any User Information.

PLACEWARE must notify CUSTOMER promptly in writing of the claim. PLACEWARE agrees to provide CUSTOMER with reasonable assistance in defending the claim, and CUSTOMER will reimburse PLACEWARE for reasonable out of pocket expenses that PLACEWARE incurs in providing that assistance.

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(b) **Defense of Claims by PLACEWARE.** PLACEWARE will defend CUSTOMER against any of the following claims made by an unaffiliated third party, and will pay the amount of any resulting adverse final judgment (or settlement to which PLACEWARE consents):

claims that any Services infringes its patent, copyright or trademark or misappropriates its trade secret.

CUSTOMER must notify PLACEWARE promptly in writing of the claim and give PLACEWARE sole control over its defense or settlement, subject to coordination with the Texas Office of the Attorney General. CUSTOMER agrees to provide PLACEWARE with reasonable assistance in defending the claim, and PLACEWARE will reimburse CUSTOMER for reasonable out of pocket expenses that CUSTOMER incurs in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act, except in the case of claims arising under any license or service agreement governed by the laws of any jurisdiction outside the United States, in which "misappropriation" will mean intentionally unlawful use and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPs agreement.

PLACEWARE's obligations will not apply to the extent that the claim or adverse final judgment is based on (i) specifications CUSTOMER provides to PLACEWARE for the Services; (ii) code or materials provided by CUSTOMER as part of Services; (iii) CUSTOMER's running of the Services after PLACEWARE notifies CUSTOMER to discontinue running due to such a claim; (iv) CUSTOMER's combining the Services with a non-PLACEWARE product, data or business process; (v) damages attributable to the value of the use of a non-PLACEWARE product, data or business process; (vi) CUSTOMER's altering the Services; (vii) CUSTOMER's distribution of the Services to, or its use for the benefit of, any third party; (viii) CUSTOMER's use of PLACEWARE's trademark(s) without express written consent to do so; or (ix) for any trade secret claim, CUSTOMER's acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than PLACEWARE or PLACEWARE's affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. CUSTOMER will reimburse PLACEWARE for any costs or damages that result from these actions.

If PLACEWARE receives information concerning an infringement claim related to the Services, PLACEWARE may, at PLACEWARE's expense and without obligation to do so, either (i) procure for CUSTOMER the right to continue to run the allegedly infringing Services, or (ii) modify the Services or replace it with a functional equivalent, to make it non-infringing, in which case CUSTOMER will stop running the allegedly infringing Services immediately. If, as a result of an infringement claim, CUSTOMER's use of Services is enjoined by a court of competent jurisdiction, PLACEWARE will, at PLACEWARE's option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for and, as applicable to certain Services, CUSTOMER's ownership rights in, the infringing Services.

If any other type of third party claim is brought against CUSTOMER regarding PLACEWARE's intellectual property, CUSTOMER must notify PLACEWARE promptly in writing. PLACEWARE may, at PLACEWARE's option, choose to treat these claims as being covered by this section. This section provides CUSTOMER's exclusive remedy for third party infringement and trade secret misappropriation claims.

(13) **DISCLAIMER OF WARRANTIES** EACH OF THE AFFILIATED ENTITIES HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, OF ACCURACY, OF SYSTEM INTEGRATION OR COMPATIBILITY, OF WORKMANLIKE EFFORT, OR OF LACK OF NEGLIGENCE. THE FOREGOING DISCLAIMERS INCLUDE, WITHOUT LIMITATION, ANY WARRANTY, DUTY, OR CONDITION THAT: THE SERVICES WILL BE UNINTERRUPTED, RELIABLE, AVAILABLE AT ANY PARTICULAR TIME, SECURE, ERROR-FREE, VIRUS-FREE, OR CORRESPOND TO A CONDITION; THAT MESSAGES OR REQUESTS WILL BE DELIVERED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SERVICES, ANY CONTENT, SYSTEMS, SERVERS, AND INFORMATION THAT IS IN OR UTILIZED BY THE SERVICES WILL BE FREE OF HARMFUL ASPECTS. ALSO, THERE IS NO WARRANTY OF TITLE OR AGAINST INTERFERENCE WITH ANYONE'S ENJOYMENT OF THE SERVICES, OR AGAINST INFRINGEMENT.

(14)

Limitation of liability.

- a. **Limitation.** There may be situations in which CUSTOMER has a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for CUSTOMER's claims, PLACEWARE's liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount CUSTOMER has paid for the product giving rise to the claims. In the case of PLACEWARE's responsibilities with respect to third party patent or copyright infringement claims, PLACEWARE's obligation to defend such claims will not be subject to the preceding limitation, but

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PLACEWARE's liability to pay damages awarded in any final adjudication (or settlement to which we consent) will be. The limitations contained in this paragraph will not apply with respect to our obligations under Section 22 (confidentiality).

- b. No liability for certain damages.** To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement or product, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.
- c. Application.** The limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

(15) No Liability for Customer Content. CUSTOMER AGREES THAT NONE OF THE AFFILIATED ENTITIES (as defined above) WILL BE LIABLE FOR: ANY CUSTOMER CONTENT, INCLUDING BUT NOT LIMITED TO: CUSTOMER CONTENT THAT IS SENT, RECEIVED, HELD, RELEASED, OR OTHERWISE CONNECTED IN ANY RESPECT TO THE SERVICES; CONTENT THAT IS SENT BUT NOT RECEIVED; ANY ACCESS TO OR ALTERATION OF CUSTOMER CONTENT; ANY CUSTOMER CONTENT SENT USING AND/OR INCLUDED IN THE SERVICES, INCLUDING WITHOUT LIMITATION ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE, OR ILLEGAL CONTENT OR CONDUCT OF ANY ANYONE; OR ANY INFRINGEMENT OF ANOTHER'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY AND PRIVACY OR DATA PROTECTION RIGHTS.

(16) Exclusion of Certain Damages. CUSTOMER AGREES THAT THE FOLLOWING DAMAGES ARE EXCLUDED AND THAT CUSTOMER WILL NOT BE ENTITLED TO ANY OF THEM: ALL INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES; DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE; FOR NEGLIGENCE OR NEGLIGENT MISREPRESENTATION; AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER. THE FOREGOING DAMAGES SHALL BE EXCLUDED EVEN IN THE EVENT OF THE FAULT OF PLACEWARE OR ANY OF THE AFFILIATED ENTITIES, WHETHER UNDER THEORY OF TORT (INCLUDING NEGLIGENCE), STRICT OR PRODUCT LIABILITY, BREACH OF CONTRACT OR ANY OTHER LEGAL THEORY, AND EVEN IF PLACEWARE OR ANY OF THE AFFILIATED ENTITIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT THESE EXCLUSIONS AND THE ABOVE LIMITATION OF DAMAGES WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

(17) Record Retention and Access to Recordings If CUSTOMER subscribed for a recording feature as part of the Services, PLACEWARE will use commercially reasonable efforts to store and make the recordings that CUSTOMER leaves in storage available to CUSTOMER during the term of the Agreement. CUSTOMER is authorized to download and use and display copies of all recordings for CUSTOMER's internal business purposes only and not for the benefit of any third party. In no circumstances is CUSTOMER authorized to sell access to or otherwise generate revenue from any recording. CUSTOMER agrees not to modify or remove any Marks (as defined above), PLACEWARE or an Affiliated Entity's copyright or trademark notices, or other symbols. PLACEWARE has no obligation to store any recording made of any CUSTOMER session or to make such recording available to CUSTOMER or any third party after the termination or expiration of this Agreement. If CUSTOMER requests a copy of any recording within ninety (90) days after termination or expiration of the Agreement, PLACEWARE at its discretion may attempt to retrieve such copy, and CUSTOMER agrees to pay PLACEWARE's reasonable charges for retrieving such copy of such recording, if any copy still exists at the time of CUSTOMER's request.

(18) Limited Purpose Access to CUSTOMER Content CUSTOMER acknowledges that the Services are provided by automated means (e.g., uploading CUSTOMER Content via the applicable software tools) and that PLACEWARE personnel will not access, view or listen to any CUSTOMER Content, except as set forth in PLACEWARE'S Privacy Policy or as otherwise necessary to perform the Services, including but not limited to the following: (a) if during a Services interruption as necessary to restore the applicable CUSTOMER Content at CUSTOMER's request; (b) if CUSTOMER has requested that PLACEWARE serve as host, producer, moderator, or facilitator for any meeting, presentation, or event as part of the Services; or (c) as deemed necessary or advisable by PLACEWARE in good faith to provide Services support, to conform to legal requirements or comply with legal process.

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(19) **Representations and Warranties About CUSTOMER Content** CUSTOMER represents and warrants that CUSTOMER: (a) is the owner or authorized licensee of any and all CUSTOMER Content; and (b) will not, and will cause any and all Users not to, publish, post, upload, record or otherwise distribute or transmit CUSTOMER Content that: (i) infringes any copyright, patent, trademark, trade secret or other proprietary right of any party, or any rights of publicity or privacy of any party; (ii) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); (iii) is inappropriate, profane, defamatory, libelous, obscene, indecent, threatening, harassing or otherwise unlawful; (iv) is harmful to minors or otherwise pornographic; (v) contains any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files or any other similar software, data or programs that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, personal information or property of another; or (vi) is materially false, misleading or inaccurate.

(20) **Submissions** As part of the Service, CUSTOMER may submit questions or comments to PLACEWARE from time to time at e.g., via http://www.placeware.com/about_us/contact_us.cfm) PLACEWARE reserves the right to edit and post the questions or comments along with its answers. All communications, comments, feedback, suggestions, ideas, and other submissions related to the Services submitted to PLACEWARE (collectively, "Submissions") will be and remain PLACEWARE's property with all worldwide right, title and interest in all copyrights and other intellectual property in all Submissions are hereby assigned (and in the future deemed to be assigned) by CUSTOMER to PLACEWARE.

(21) **Confidentiality** Customer's duties under the Texas Public Information Act shall control Customer's behavior with regard to this paragraph in the event of any conflict between the language of this paragraph and the requirements of the Texas Public Information Act. Subject to the forgoing, Customer agrees as follows: Each party (a "Recipient") agrees that at all times during the term of this Agreement, and for five (5) years thereafter, Recipient will hold in strictest confidence, and will not use or disclose to any third party, any confidential information of the other party (a "Discloser"). "Confidential Information" means all non-public information that Discloser designates as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential. "Confidential Information" includes the terms and conditions of this Agreement, passwords or access keys to the Services, any pricing information about the Services, or information received from others that Discloser is obligated to treat as confidential. If Recipient has any questions as to what comprises "Confidential information," Recipient agrees to consult with Discloser. "Confidential Information" will not include information that was known to Recipient before Discloser's disclosure to Recipient, or information that becomes publicly available through no fault of Recipient. Each party may, however, disclose Confidential Information of the other party in accordance with judicial or other governmental order or as necessary to comply with any applicable law or regulation governing regulated businesses or the issuance of securities to the public, provided the party making such disclosure gives the other party reasonable notice prior to such disclosure and, in the case of a judicial or governmental order, complies with any applicable protective order or equivalent.

(22) **Scheduled Maintenance** PLACEWARE performs regularly scheduled maintenance on the Services from time to time. Currently, maintenance is conducted every Friday from 6:00 p.m.–12:00 a.m. Saturday (Pacific Time) excluding nationally-recognized holidays in the United States. During that time, and otherwise as deemed necessary or desirable by PLACEWARE, the Services will not be available for use.

(23) **Links to Third Party Sites** Links within the Site may let CUSTOMER and/or Users leave the Site and visit web sites that are not controlled by PLACEWARE. PLACEWARE is not responsible for any content of any such linked web site. Links are provided only as a convenience and do not imply any endorsement by PLACEWARE or any Affiliated Entity.

(24) **Compliance with Applicable Law** CUSTOMER agrees not to use Services for any illegal purposes and to comply with all applicable local, state, national and international laws and regulations, including without limitation laws relating to recording conversations, privacy, data protection, public displays or performances, and United States export laws and regulations regarding the transmission of technical data exported from the United States through the Services. CUSTOMER further agrees that neither this Agreement nor any other right or remedy of PLACEWARE requires PLACEWARE to exercise any right or remedy in order to benefit or protect CUSTOMER or anyone else, although PLACEWARE reserves the right to do so in its sole discretion.

(25) **Termination**

(a) Termination for Material Breach/Convenience. Either party may terminate this Agreement (or any Schedule(s) hereunder) upon written notice to the other party, for any material breach, including, without limitation breach of representations or warranties, or any non-payment, that is not cured within thirty (30) days after sending

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written notice identifying the alleged breach. In the event of a breach of this Agreement by CUSTOMER or any User, PLACEWARE reserves the right to and may immediately restrict or suspend CUSTOMER's (and any and all Users') access to the Services or any portion thereof.

(b) Survival, Transition Period and Fee Refund. In the event of termination or expiration of the Agreement, Sections 1, 6, 7, 8, 10, 12-16, 18-21, and 24-32, shall survive.

.(26) Miscellaneous.

(a) Assignment. This Agreement may not be assigned by either party absent the written consent of the other party, except that either party may assign this Agreement to an entity owned or controlled by such party, and PLACEWARE may assign the Agreement to Microsoft Corporation or an Affiliated Entity. Any assignment will not relieve the assigning party of its obligations under this Agreement.

(b) Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the Agreement to give effect to the stricken clause to the maximum extent possible.

(c) Waiver. No waiver of any breach of this Agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(d) Force Majeure. To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

(e) Applicable Law and Jurisdiction. The laws of the State of Texas shall govern this Contract. Actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas. Nothing herein shall be construed to waive the State's sovereign immunity.

(27) Relationship of the Parties; Third Party Beneficiaries. CUSTOMER and PLACEWARE are independent contractors. Nothing in this Agreement will be construed as creating an agency, partnership or employer-employee relationship between the parties. The Affiliated Entities are third party beneficiaries to this Agreement; however, there are no other third party beneficiaries.

(28) Export Restrictions. CUSTOMER acknowledges that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the PLACEWARE Services and Software. Without limiting the foregoing, CUSTOMER understands that the Services and Software are or may be an "encryption item" subject to controls under the Export Administration Regulations promulgated by the U.S. Department of Commerce. CUSTOMER agrees that it will not, and will cause others not to, export or re-export the Services or Software in any form in violation of the export laws of the United States or any foreign jurisdiction. CUSTOMER will defend, indemnify, and hold PLACEWARE harmless from and against any violation of such laws or regulations by any of CUSTOMER's agents, officers, directors, employees or any User(s).

(29) Governmental Agencies. Any Software which is downloaded for use in connection with the Services for or on behalf of the United States of America, its agencies, and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Contractor/manufacturer is PLACEWARE, Inc., One Microsoft Way, Redmond, WA 98052.

(30) Notices All notices and requests in connection with this Agreement will be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

NOTICES TO CUSTOMER:

At the address set forth for CUSTOMER
Telephone: (If Provided)
Fax: (If Provided)

NOTICES TO PLACEWARE:

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PLACEWARE, INC.
One Microsoft Way
Redmond, WA 98052-6399

Attention: General Manager, Sales
Copy to: Law & Corporate Affairs
Fax: (425) 706-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

(31) **Entire Agreement.** The Agreement constitutes the entire agreement between CUSTOMER and PLACEWARE with respect to the Services and supersedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between CUSTOMER and PLACEWARE regarding the subject matter of this Agreement. This Agreement does not supersede any end user software license agreement between PLACEWARE and individual users of any software provided by PLACEWARE to access and use the Services. The application of the United Nations Convention on the International Sale of Goods is hereby expressly excluded. PLACEWARE's performance of this Agreement (including its Privacy Policy) is subject to existing laws and legal process, and CUSTOMER agrees that PLACEWARE may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of this Agreement or its Privacy Policy.

(32) **Amendments to this Agreement.** This Agreement cannot be amended except by a written agreement (e.g., not via email) dated subsequent to the date of this Agreement and manually signed on behalf of the parties by their respective duly authorized representatives.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

PLACEWARE, INC.

By (Sign)

Name (Print)

Title

Date

CUSTOMER

By (Sign)

Name (Print)

Title

Date

DM

Service Level Exhibit

To Microsoft Office Live Meeting Master Services Agreement (the "Agreement")

Service Level.

PLACEWARE Inc. ("PLACEWARE") a wholly owned subsidiary of Microsoft, appreciates the opportunity to provide the Services to CUSTOMER. PLACEWARE will use commercially reasonable efforts to provide the Services under the Agreement with at least a **99.9%** monthly level of uptime, excluding regularly scheduled maintenance and force majeure events as set forth in the Agreement. If PLACEWARE fails to provide the Services uptime level described above, then as set forth below, CUSTOMER may request that PLACEWARE provide a pro-rata refund for the amount of time that the applicable Services were unavailable during the monthly period in question (a "Downtime Event").

PLACEWARE performs regularly scheduled maintenance on the Services from time to time. Currently, maintenance is conducted every Friday from 6:00 p.m.–12:00 a.m. Saturday (Pacific Time) excluding nationally-recognized holidays in the United States. During that time, the Services may not be available for use.

Process for Obtaining Service Level Refunds.

CUSTOMER must inform PLACEWARE within thirty (30) days of any Downtime Event and request the pro-rata refund by sending email to support@placeware.com. Such email must identify the CUSTOMER, the date of the Agreement and reference this SLA. Upon verification by PLACEWARE of such Downtime Event, PLACEWARE will refund the applicable pro-rata amount to CUSTOMER for the monthly period affected within sixty (60) days.

Technical Support Contacts.

PLACEWARE will provide technical support as set forth in the Agreement. CUSTOMER technical support contact information is as follows:

- U.S. & Canada – 1-866-493-2825
- Outside the U.S. & Canada – 1-650-526-6950
- Email – support@placeware.com

DM

SCHEDULE A TO MICROSOFT OFFICE LIVE MEETING MASTER SERVICES AGREEMENT

DM

Appendix C

# of shared Presenter seats	% Discount
5-24	28%
25-49	32%
50-99	36%
100-249	40%
250-499	40%
500+	40%

# of shared Premier seats	% Discount
5-24	45%
25-49	45.5%
50-99	46.4%
100-249	47.2%
250-499	50%
500+	51.4%

DM



Texas Building And Procurement Commission Electronic State Business Daily

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Placeware, Microsoft Live Office Meeting Services Agreement

Agency: DEPARTMENT OF INFORMATION RESOURCES

Open Date: 01/09/04 09:30 AM

Agency Requisition Number: DIR-BUSOP-TMP-011

Previous Price Paid: N/A

Bid type: 14 Days for entire bid or proposal solicitation package

NIGP Commodity Code(s):

Class-Item: 920 - 02

Contact Information:

Contact Name: Stephanie Miller

Email: stephanie.miller@DIR.State.TX.US

Address: 300 W 15 Ste 1300 Austin, TX 78701

PO Box 13564

Austin, TX 78711-3564

Phone: (512) 463-6362

NOTE: You will need to download all of the following files below for complete bid specifications.

Help: Right Click to and choose "save file as" or "save target as" to your computer. [More Help](#)

-Bid Package 1 size: 84992 (in bytes) Type: Non-Bid Information Format: Word for Windows 97

Details:

****NOTICE ONLY**NOTICE ONLY**NOTICE ONLY**NOTICE ONLY**NOTICE ONLY**** **This posting is a NOTICE ONLY of intent to contract. The State of Texas, acting by and through the Department of Information Resources, is seeking to enter into a services agreement with Placeware, a wholly owned subsidiary of Microsoft Corporation and/or Microsoft Corporation for Live Office Meeting Services.

Upload Date: 2003-12-22 11:57:12 Updated date: 2003-12-22 11:57:12